1 2004-17-H BEFORE THE ARIZONA STATE BOARD OF PHARMACY 2 3 In the Matter of: Case Number 2004-17-PHR K-MART #7236 4 Holder of Non-Prescription Drug Permit No. 5966 CONSENT AGREEMENT AND ORDER 5 FOR PROBATION In the State of Arizona, 6 Respondent 7 8 TO: K-MART #7236 9 6767 W. Bell Road Glendale, AZ 85308 10 RECITALS 11 In the interest of a prompt and judicious settlement of this case, consistent with the public interest, 12 13 statutory requirements and responsibilities of the Arizona State Board of Pharmacy ("Board"), and under A.R.S. § 32-1932, et seq. and 41-1092.07(F)(5), K-MART #7236, holder of permit number 5966 to sell, 14 retail, stock, expose or offer for sale at retail non-prescription drugs in the original package in the State 15 of Arizona ("Respondent"), and the Board enter into the following Recitals, Finding of Fact, Conclusions 16 of Law and Order ("Consent Agreement") as the final disposition of this matter. 17 Respondent has read and understands this Consent Agreement as set forth herein, and has 18 1. had the opportunity to discuss this Consent Agreement with an attorney. Respondent voluntarily enters 19 20 into this Consent Agreement for the purpose of avoiding the expense and uncertainty of an administrative 21 hearing. Respondent understands that it has a right to a public administrative hearing concerning the 22 above-captioned matter, at which administrative hearing it could present evidence and cross-examine 23 witnesses. By entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all 24 rights to such an administrative hearing, as well as all rights of rehearing, review, reconsideration, appeal, 25

judicial review or any other administrative and/or judicial action, concerning the matters set forth herein.

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Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

- 3. Respondent understands that this Consent Agreement or any part of the agreement may be considered in any future disciplinary action against it.
- 4. Respondent understands that this Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other pending or future investigation, action or proceeding. Respondent understands that acceptance of this Consent Agreement does not preclude any other agency, subdivision or officer of this state from instituting any other civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.
- 5. Respondent understands that this Consent Agreement deals with Board Investigation Case No. 2004-17 involving allegations of misconduct against Respondent. The investigation into these allegations against Respondent shall be concluded upon the Board's adoption of this Consent Agreement.
- 6. All admissions made by Respondent in this Consent Agreement are made solely for the final disposition of this matter, and any related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, any admissions made by Respondent in this Consent Agreement are not intended for any other use, such as in the context of another regulatory agency proceedings, or civil or criminal proceedings, whether in the State of Arizona or in any other state or federal court.
- 7. Respondent acknowledges and agrees that, upon signing this Consent Agreement and returning this document to the Board's Executive Director, Respondent may not revoke its acceptance of the Consent Agreement or make any modifications to the document, regardless of whether the Consent Agreement has been issued by the Board's Executive Director. Any modification to this original document is ineffective and void unless mutually approved by the parties in writing.
- 8. Respondent understands that the foregoing Consent Agreement shall not become effective unless and until adopted by the Board and signed by its Executive Director.
- 9. Respondent understands and agrees that if the Board does not adopt this Consent Agreement, it will not assert as a defense that the Board's consideration of this Consent Agreement



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constitutes bias, prejudice, prejudgment or other similar defenses.

10. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board, and shall be reported as required by law to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

11. Respondent understands that any violation of this Consent Agreement constitutes a violation of A.R.S. § 32-1932 et seq., which may result in disciplinary action under the statute.

K-MART #7236

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Reviewed and Approved as to form:

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Sy: (Insert Name of Attorney, If any), Esq. Attorney for Respondent

FINDINGS OF FACT

By stipulation of the parties, this Consent Agreement is entered into for final disposition of the matters described therein. Respondent admits to the following Finding of Fact:

- 12. Under A.R.S. § 32-1901, at seq., the Board possesses jurisdiction over the subject matter and over Respondent as a permittee of the Board.
- 13. The Board is the duly constituted authority for the regulation and control of the practice of pharmacy and supplying of drugs in the State of Arizona.
- 14. Respondent is the holder of Permit No. 5966 to sell, retail, stock, expose or offer for sale at retail non-prescription drugs in the original package in the State of Arizona.
- 15. On or about July 18, 2003, Respondent offered for sale to the public firty-two (42) non-prescription drug items as listed in Exhibit A in the non-prescription drug department of the store

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Officer notified Respondent of this infraction, and Respondent took measures to correct this problem.			
16. On or about April 28, 2004, Respondent offered for sale to the public fifty-two (52)			
non-prescription drug items as listed in Exhibit B in the non-prescription drug department of the			
store that had exceeded the manufacturer's expiration date.			
17. The conduct described in paragraph fifteen (15) of the Findings of Fact above can be			
considered as an aggravating circumstances in determining a disciplinary penalty if the Board finds			
the Respondent guilty of the conduct alleged in paragraph seventeen (16).			
<u>CONCLUSIONS OF LAW</u>			
18. Under A.R.S. § 32-1901, et seq., the Board is the duly constituted authority for the			
regulation and control of the practice of pharmacy and supplying of drugs in the State of Arizona.			
19. The conduct and circumstances described in paragraph sixteen (16) constitute			
violations of A.A.C. § R4-23-603(F)(2) to wit:			
A.C.C. R4-23-603(F)(2) A non-prescription drug permitee shall:			
2. Develop and implement a program to ensure that:			
a. Any expiration-dated drug is reviewed regularly;			
b. Any drug, that exceeds its expiration date, is deteriorated or damaged, or does not comply with federal law, is moved to a quarantine area and not sold or			
distributed; and c. Any quarantined drug is destroyed or returned to its source of supply.			
20. The conduct and circumstances described in paragraph sixteen (16) constitute grounds for			
discipline under A.R.S. § 32-1932(A)(1) to wit:			
discipline under A.R.S. § 32-1932(A)(1) to wit: A.R.S. § 32-1932(A): The board after notice and hearing, may impose a civil penalty			
discipline under A.R.S. § 32-1932(A)(1) to wit: A.R.S. § 32-1932(A): The board after notice and hearing, may impose a civil penalty of not more than one thousand dollars for each offense and deny, suspend or revoke any permit issued under this chapter or place a permittee on probation if at any time			
discipline under A.R.S. § 32-1932(A)(1) to wit: A.R.S. § 32-1932(A): The board after notice and hearing, may impose a civil penalty of not more than one thousand dollars for each offense and deny, suspend or revoke any permit issued under this chapter or place a permittee on probation if at any time any of the following occurs: (1) On examination or inspection it is found that the place is not being			
discipline under A.R.S. § 32-1932(A)(1) to wit: A.R.S. § 32-1932(A): The board after notice and hearing, may impose a civil penalty of not more than one thousand dollars for each offense and deny, suspend or revoke any permit issued under this chapter or place a permittee on probation if at any time any of the following occurs: (1) On examination or inspection it is found that the place is not being conducted according to the federal act and this chapter relating to the manufacturing, sale and distribution of drugs, devices, poisons or hazardous			
discipline under A.R.S. § 32-1932(A)(1) to wit: A.R.S. § 32-1932(A): The board after notice and hearing, may impose a civil penalty of not more than one thousand dollars for each offense and deny, suspend or revoke any permit issued under this chapter or place a permittee on probation if at any time any of the following occurs: (1) On examination or inspection it is found that the place is not being conducted according to the federal act and this chapter relating to the			

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ORDER

Based upon the above Findings of Fact and Conclusions of Law and under the authority granted to the Board by A.R.S. § 32-1928, 41-1092.07(F)(5), and A.A.C. R4-23-122(C),

IT IS HEREBY ORDERED that:

- 21. Permit No. 5966, which was issued to Respondent to sell, retail, stock, expose or offer for sale at retail non-prescription drugs in the original package in the State of Arizona, is hereby placed on **PROBATION** for one (1) year upon adoption of this Consent Agreement by the Board. The **PROBATION** is subject to the following conditions:
- 22. Respondent shall pay a civil penalty of ten dollars (\$10.00) for each of the fifty-two (52) violations itemized in Exhibit B, for a total of five hundred and twenty dollars (\$520.00) by certified check or cashier's check to the Board within 60 days of the date of this Order.
- 23. Respondent shall obey all federal and state laws and rules governing the selling, stocking, exposing or offering for sale at retail non-prescription drugs.
- 24. Respondent shall pay all fees to maintain Permit No. 5966 throughout the term of probation.
- 25. If Respondent violates this Order in any way or fails to fulfill the requirements of this Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke, suspend or take other disciplinary action against the Respondent. The issue at such hearing will be limited solely to whether this Board Order has been violated.
- 26. Respondent shall appear before the Board at a regularly scheduled Board meeting on or after August 11, 2005 to request that the probation imposed by this order be terminated. Respondent has an affirmative duty to petition the Board to terminate its probation; otherwise, the probation shall continue beyond its one year period.

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1	DATED AND EFFECTIVE this 11th (day of August, 2004.
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4		ARIZONA STATE BOARD OF PHARMACY
5	SEAL	By Mellical
6		Hal Wand, Executive Director Arizona State Board of Pharmacy
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9	ORIGINAL of the foregoing filed this 13th day of August, 2004, with:	
10 11	Arizona State Board of Pharmacy 4425 W. Olive Avenue, Suite 140 Glendale, Arizona 85302	
12	COPY of the foregoing mailed by	Agent Agent No
13	US Certified Mail # this 13 th day of August, 2004, to:	
14 15 16	Joe Hands, RPh C/O K-MART #3304 1330 W. Baseline Road Tempe, AZ 85283	Frank Clearly B. 100 ON DELIVE CLEARLY B. 100 ON DELIVE CLEARLY C. 100 O. 100 O
17 18	and Roberto Pulver Assistant Attorney General	ed by (P) (24) (A) (A) (A) (A) (A) (A) (A) (A) (A) (A
19	1275 W. Washington, CIV/LES Phoenix, Arizona 85007 Attorney for the State	8 4 X O 8 4 S
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26		SENDER: COMPLETE THIS SECTION Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailplece, or on the front if space permits. 1. Article Addressed to: Mr. Joe Hands, Rph C/O K-Mart #3304 1330 W. Baseline Road Tempe AZ 85283 2. Article Number (Copy from service label) PS Form 3811, July 1999 Dome
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